

NO. COA14-773

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

Gaston County
Nos. 12CRS65246, 14CRS051015

TERRELL KNOX,
Defendant.

Appeal by defendant from judgments entered on or about 8 April 2014 by Judge Robert C. Ervin in Superior Court, Gaston County. Heard in the Court of Appeals 18 November 2014.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Joseph L. Hyde, for the State.

The Exum Law Office, by Mary March Exum, for defendant-appellant.

STROUD, Judge.

Terrell Knox ("defendant") appeals from a judgment entered revoking his probation and activating his sentence for a 2012 offense, and a judgment entered upon a plea agreement in which he pled guilty to a 2014 offense pursuant to *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970). Defendant argues that the trial court lacked (1) statutory authority to hold a probation revocation hearing, because defendant did not receive proper notice of the hearing; and (2) subject matter

jurisdiction to revoke his probation, because the State completed its probation violation report after the revocation hearing. We affirm the trial court's judgments.

I. Background

On or about 11 November 2012, defendant committed the offense of assault by strangulation. See N.C. Gen. Stat. § 14-32.4(b) (2011). On or about 25 February 2013, defendant pled guilty to assault by strangulation pursuant to a plea agreement. The trial court sentenced defendant to nine to twenty months' imprisonment but suspended the sentence and placed defendant on thirty-six months' supervised probation.

On or about 25 January 2014, defendant committed the offense of felony larceny. See *id.* § 14-72(a) (2013). On or about 3 February 2014, a grand jury indicted defendant for felony larceny and breaking or entering into a motor vehicle. See *id.* §§ 14-56, 14-72(a) (2013).

On 8 April 2014, the trial court held a probation revocation hearing in which defendant accepted a plea agreement and pled guilty to the offense of felony larceny pursuant to *Alford*, 400 U.S. 25, 27 L. Ed. 2d 162. Defendant's counsel stated that defendant acknowledged that he had received a probation violation report, and that defendant admitted the

allegations in the report. In the plea agreement, the State dismissed the remaining charge.

On or about 8 April 2014, the trial court ordered that defendant's probation be revoked and activated defendant's sentence for the assault by strangulation offense. The trial court also sentenced defendant to nine to twenty months' imprisonment for the felony larceny offense. The trial court ordered that defendant serve the sentences consecutively.

On or about 9 April 2014, the State completed a probation violation report. On 9 April 2014, defendant gave timely notice of appeal.

II. Notice

Defendant contends that the trial court lacked statutory authority to hold a probation revocation hearing, because defendant did not receive proper notice of the hearing, in contravention of defendant's right to due process and N.C. Gen. Stat. § 15A-1345(e) (2013). N.C. Gen. Stat. § 15A-1345(e) provides in pertinent part: "The State must give the [defendant] notice of the [revocation] hearing and its purpose, including a statement of the violations alleged. The notice, *unless waived* by the [defendant], must be given at least 24 hours before the hearing." See N.C. Gen. Stat. § 15A-1345(e)

(emphasis added). “[W]hen a defendant voluntarily appears at the appointed time and place and participates in [a probation revocation] hearing as the defendant did in this case, he is not prejudiced by the failure of the written notice to contain [the date, time, and place of the hearing].” *State v. Langley*, 3 N.C. App. 189, 191, 164 S.E.2d 529, 530 (1968).

At the revocation hearing, defendant’s counsel stated that defendant acknowledged that he had received a probation violation report, and that defendant admitted the allegations in the report. Defendant appeared and participated in the hearing voluntarily. Accordingly, we hold that defendant waived the notice requirement. See N.C. Gen. Stat. § 15A-1345(e); *Langley*, 3 N.C. App. at 191, 164 S.E.2d at 530. We therefore hold that the trial court violated neither N.C. Gen. Stat. § 15A-1345(e) nor defendant’s right to due process.

III. Subject Matter Jurisdiction

A. Standard of Review

We review *de novo* whether a trial court has subject matter jurisdiction in a probation revocation hearing. *State v. Satanek*, 190 N.C. App. 653, 656, 660 S.E.2d 623, 625 (2008). A defendant may raise this issue at any time, even for the first time on appeal. *Id.*, 660 S.E.2d at 625.

B. Analysis

Defendant next contends that the trial court lacked subject matter jurisdiction to revoke his probation, because the State completed its probation violation report after the revocation hearing, in contravention of N.C. Gen. Stat. § 15A-1344(f)(1) (2013). N.C. Gen. Stat. § 15A-1344(f) provides in pertinent part:

The court may extend, modify, or revoke probation *after* the expiration of the period of probation if all of the following apply:

(1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.

N.C. Gen. Stat. § 15A-1344(f) (emphasis added). On or about 25 February 2013, the trial court placed defendant on thirty-six months' supervised probation. On or about 8 April 2014, the trial court revoked defendant's probation. Because the trial court revoked defendant's probation *before* the period of probation expired, N.C. Gen. Stat. § 15A-1344(f) is inapplicable here. See *id.*

Defendant's reliance on *State v. Moore* is misplaced. 148 N.C. App. 568, 571, 559 S.E.2d 565, 567 (2002). There, this Court held that, under N.C. Gen. Stat. § 15A-1344(f), the trial

court lacked subject matter jurisdiction to modify the defendant's probation *after* the period of probation had expired, because the record lacked sufficient evidence that the State had filed a probation violation report before the period of probation had expired. *Id.*, 559 S.E.2d at 567. In contrast, here, the trial court revoked defendant's probation *before* the period of probation had expired.

Because the trial court revoked defendant's probation before the period of probation had expired, we hold that the trial court did not violate N.C. Gen. Stat. § 15A-1344(f) and properly exercised subject matter jurisdiction. See N.C. Gen. Stat. § 15A-1344(f).

IV. Conclusion

For the foregoing reasons, we affirm the trial court's judgments.

AFFIRMED.

Judges CALABRIA and McCULLOUGH concur.